Pedley v Majlis Ugama Islam Pulau Pinang & Anor

HIGH COURT (PENANG) — ORIGINATING SUMMONS NO 31-717-87
WAN ADNAN J
13 APRIL 1990

Civil Procedure — Declaration — Application for — Question raised purely academic — No consequential relief asked for — Declaration refused

Family Law — Marriage — Dissolution of — Parties married according to Catholic rites — Wife embracing religion of Islam — Whether marriage dissolved — Law Reform (Marriage and Divorce) Act 1976, s 51(1)

The plaintiff, a Roman Catholic, had married a Roman Catholic lady according to Catholic rites on 12 February 1966. On 12 January 1987, the wife embraced the religion of Islam without the plaintiff's knowledge and assumed a Muslim name. The plaintiff applied, inter alia, for a declaration that the conversion of his wife has not determined his marriage to her.

Held, dismissing the plaintiff's application:

(1) It is clear that under the civil law a non-Muslim marriage is not dissolved upon one of the parties converting to Islam. It only provides a ground for the other party who has not converted to petition for divorce.

(2) The declaration applied for is purely academic. The plaintiff is not going to benefit in any way from the declaration. He is only asking for the declaration of a mere legal right and is not asking for any consequential relief.

Cases referred to

1 *Eeswari Visuvalingam* v *Government of Malaysia* [1990] 1 MLJ 86 (folld)
2 *Howard* v *Pickford Tool Co Ltd* [1951] 1 KB 417 (refd)
3 *Thorne Rural District Council* v *Bunting* [1972] 1 All ER 439 (refd)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 s 51(1)

Karpal Singh for the plaintiff.
V Thevendran for the first defendant.
Hashim bin Dato' Haji Yusoff (Legal Adviser, Penang) for the second defendant.

Cur Adv Vult

Wan Adnan J: By this application, the plaintiff is asking for the following declaration:

(1) That the conversion of the plaintiff's wife Olwen Patricia Pedley nee Newman @ Mahani Newman bte Abdullah to Islam on 12 January 1987 has not determined his marriage to her according to Catholic rites on 12 February 1966.

(2) That the continued living together of the plaintiff and his wife, Olwen Patricia Pedley nee Newman @ Mahani Newman bte Abdullah is lawful.

The plaintiff married one Olwen Patricia Pedley nee Newman at the Cathedral of the Assumption, Farquhar St, Penang on 12 February 1966. Both them were practising Roman Catholics. On 12 January 1987, the said Olwen Patricia Pedley embraced the religion of Islam without the plaintiff's knowledge and consent at the Jabatan Hal Ehwal Ugama, Lebuh Downing, Pulau Pinang and assumed the name of Mahani Newman bte Abdullah.

On 10 April 1987, the Kadi Besar of Negeri Pulau Pinang, Haji Fathil bin Haji Abdullah, wrote to the plaintiff as follows:

> Dimaklumkan berhubung dengan perkara yang di atas, bahawa isteri tuan yang bernama Oliven @ Olwen Patricia Newman K/P No 2542313 dulu alamat 4090 Jalan Pantai, Butterworth, Pulau Pinang telah memeluk ugama Islam pada 12 Januari 1987 bil No Negeri 8/87, Daerah 2/87.
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> 2 Oleh itu tuan adalah dinasihatkan supaya tuan turut sama memeluk ugama Islam dalam masa lebih kurang 90 hari dari tarikh isteri tuan memeluk Islam. Jika tidak tuan dianggap terputus hubungan di antara tuan dengan isteri tuan sebagai suami isteri yang sah mengikut undang-undang Islam.

At the hearing, counsel for the plaintiff withdrew the application for the second declaration as the wife was no longer living with the plaintiff.

The Supreme Court in the case of *Eeswari Visuvalingam* v *Government of Malaysia*[1] had stated as follows:

> In *Farooq Leivers* v *Adelaide Bridget Mary* PLD 1958 (WP) Lahore 431, the plaintiff, a non-Muslim, converted to Islam, asked the defendant to study the Islamic religion and embrace Islam but she refused. The plaintiff, realizing that there was no chance of a reconciliation, divorced the defendant by pronouncing the Islamic formula of talak. The learned judge there realized that as the plaintiff had embraced Islam he at once became subject to Muslim personal and religious laws. But the more difficult question in such cases was what was the effect of the conversion on other persons who have some rights vested in them before the conversion. In that case the learned judge held that:
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> 'On the one hand under the Muslim law, a Christian husband, on his conversion to Islam, is authorized to give talak to his Christian wife by pronouncing the formula of talak, but on the other hand, the courts in Pakistan cannot recognize such a talak in view of the provisions of the Divorce Act 1869 and other existing laws. In such a conflict of the personal law of the parties to the suit, there does not appear to be any justification to prefer the personal law of the plaintiff to the personal law of the respondent.'
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> In our case here, the law applicable to the appellant had always been her own personal laws, and the civil laws of the country. See also *Che Omar bin Che Som* v *PP* [1988] 2 MLJ 55.

Applying the above principles, the personal laws of the plaintiff and the civil laws of the country are applicable to the plaintiff in respect of the marriage in question.

Section 51(1) of the Law Reform (Marriage and Divorce) Act 1976 provides as follows:

Dissolution on ground of conversion to Islam
(1) Where one party to a marriage has converted to Islam, the other party who has not so converted may petition for divorce.

It is therefore clear that under the law, a non-Muslim marriage is not dissolved upon one of the parties converting to Islam. It only provides a ground for the other party who has not converted to petition for divorce.

The power of the court to make a declaratory judgment is discretionary. The court will not make a declaratory judgment when the question raised is purely academic. The court should not be required 'to answer academic questions' — *Howard* v *Pickford Tool Co Ltd.*[2] Although the remedy by way of declaration is wide and flexible yet it will not be granted to a plaintiff whose claim is too indirect and unsubstantial and would not give him 'relief' in any real sense, ie relieve him from any liability or disadvantage or difficulty: *Thorne Rural District Council* v *Bunting.*[3]

I find that the declaration prayed for is purely academic. The plaintiff is not going to benefit in any way from the declaration. He is not asking for any consequential relief. He is only asking for a declaration of a mere legal right. Counsel for the plaintiff says that the court ought to make the declaration prayed for in view of the letter dated 10 April 1987 written by the Kadi Besar to the plaintiff as stated above to the effect that if he did not become a Muslim following his wife, his marriage to the wife would be dissolved in accordance with the Islamic law. In my view, the assertion of the said Kadi Besar did not and will not affect the plaintiff's legal position in the eyes of his own personal laws and the civil laws of the country. He will therefore not benefit in any way by the declaration prayed for.

I therefore dismissed the application. In the circumstances of the case, I felt that I should not order costs against the plaintiff. I therefore ordered that each party bear his own costs.

Application dismissed.

Solicitors: *Karpal Singh & Co; Daud, Thevendran & Partners.*

Nordin Hamid & Co v Pathmarajah & Anor

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R8-25-70-89
EUSOFF CHIN J
31 MARCH 1990

Administrative Law — Right to be heard — Breach of natural justice — Refusal by Industrial Court to adjourn hearing — Counsel for applicant discharging themselves — Representatives of applicant firm not present to give evidence — Principles regarding adjournment — Whether Industrial Court acted reasonably or in excess of jurisdiction or in breach of rules of natural justice

The applicant, a legal firm, applied for an order of certiorari to quash the Industrial Court Award No 70 of 1989 made on 2 May 1989 upon a reference by the minister under s 20(3) of the Industrial Relations Act 1967 ('the Act') arising out of the dismissal of the first respondent (an advocate and solicitor) by the applicant without just cause or excuse. The applicant named the Industrial Court as the second respondent. The main ground of the application is that the applicant was not afforded by the Industrial Court a reasonable opportunity to be heard.

It was submitted by counsel on behalf of the applicant that on the hearing date on 24 April 1989, counsel for the applicant applied for adjournment on the four grounds stated in the judgment. The Industrial Court refused to grant the adjournment and, upon counsel for the applicant discharging themselves, proceeded with the hearing and made an award ($67,500) in favour of the respondent. No one from the applicant firm gave evidence. Counsel for the applicant contended that the Industrial Court had acted in breach of the rules of natural justice. Counsel for the respondent contended that this was not a case where the Industrial Court had suddenly fixed the hearing, giving the parties insufficient notice so that the applicant was taken by surprise. The applicant is a legal firm which should know what to do in the matter. The parties were given seven months to prepare their cases and the applicant had not filed its statement in reply. The applicant had not applied to the High Court for an order to stay the proceedings in the Industrial Court. The main question for decision is whether the Industrial Court had in the circumstances exercised its discretion correctly by refusing further adjournment of the hearing.

Held, dismissing the application:

(1) The Industrial Court had in the circumstances exercised its discretion correctly by refusing further adjournment of the hearing. It appears that the applicant was not serious in defending itself at the Industrial Court. The applicant was ordered to submit its statement in reply by 11 February 1988, but it failed to do so. It asked for and was granted extension of time to file the statement in reply. But even by the final date of hearing on 24 April 1989, the applicant had not filed its statement in reply in the Industrial Court proceedings. The applicant's failure to file a statement of reply was not explained by the affidavit evidence of the senior partner of the applicant firm.

(2) Having regard to the background of the proceedings, the conduct of the applicant before the Industrial Court, and the requirements of s 30(3) of the Act, the court found that the Industrial Court had acted reasonably, and had not acted in excess of its jurisdiction or in breach of the rules of natural justice when it decided to proceed to hear and dispose of the reference notwithstanding the last minute application for the adjournment and the subsequent act of the applicant's counsel discharging themselves from acting for the applicant.